



June 12, 2000

Mr. Paul F. Wieneskie
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Attorneys at Law
P. O. Box 13060
Arlington, Texas 76094-0060

OR2000-2277

Dear Mr. Wieneskie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136057.

The City of Euless (the "city"), who you represent, received a request for information relating to complaints filed against a city police officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. The city further asserts that the requestor may be acting as the agent of an individual who is imprisoned or confined in a correctional facility and, therefore, the city is not required to comply with the request pursuant to section 552.028 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note at the outset that section 552.028 is not an exception to release that this office may consider. Section 552.028(a) provides:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.

You state that "it appears that the requestor's mother is acting as his agent in this specific instance. . . ." We note that the requestor is the *mother* of an incarcerated individual, not the incarcerated individual himself, as implied by your statement. Nevertheless, if the requestor is indeed acting as her son's agent, the Public Information Act (the "Act") gives the city the discretion to either "comply with" this request or deny it in its entirety.

You also request of this office clarification on the scope of the request. The requestor seeks "copies of the [police] department's records in regard to all complaints filed concerning the above named officer in accordance to [sic] the requirements of the Attorney General's Open Records Decision No[s]. 350 (1982), 342 (1982) and 329 (1982) which provides that the names of the complainants, the names of the officers who are the subject of the complaints, an officer's written response to a complaint and the final disposition of a complaint are subject to disclosure under the Texas Open Records Act." You ask whether the city must release all of its records or only the items specifically stated in the requestor's letter.¹ We interpret the request as seeking information relating to all complaints filed concerning the specified officer, including but not limited to the specifically stated items. The city has furnished for our review information relating to four such complaints, which we assume comprises the entirety of the responsive information that the city holds or to which the city has a right of access. Gov't Code § 552.002. We therefore herein address the exceptions you have asserted to the entirety of the information you have submitted.

You assert the information contained in exhibit B, in its entirety, and the document from exhibit E titled "Summary of Internal Investigation # 019-92" are excepted from disclosure pursuant to section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the

¹We note that the Public Information Act (the "Act") specifically states that if "what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request." Such clarification is therefore specifically permissible under the Act, provided the city does not "inquire into the purpose for which the information will be used." See Gov't Code § 552.222. The city apparently has not availed itself of the opportunity to clarify the scope of information sought by the requestor.

governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. We have reviewed exhibit B and the investigation summary from exhibit E and conclude that you have failed to establish that the information reflects the policymaking processes of the governmental body. The information cannot be withheld under section 552.111.

You also claim that exhibit B is excepted from disclosure pursuant to section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You assert that exhibit B, a preliminary investigation report, pertains to a internal criminal investigation that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense report information, you may withhold the investigation report from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the investigation report that is not otherwise confidential by law. Gov't Code § 552.007.

You assert some of the information contained in the exhibits C, D, and E is confidential and excepted from disclosure under section 552.101. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the information responsive to the request contains documents consisting of "Garrity Warnings" which the officer made in the belief that his answers to written questions were confidential pursuant to the United States Supreme Court decisions in *Garrity v. New Jersey*, 385 U.S. 493 (1967) and *Spevak v. Klein*, 385 U.S. 511 (1967). The Court in *Garrity* held that "the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office." *Garrity*, 385 U.S. at 500. The line of decisions following *Garrity* deal with the admissibility of evidence derived under the threat of termination in criminal prosecutions. The court's holding in *Garrity* has no bearing on whether those statements are confidential under the Public Information Act (the "Act"). See Open Records Decision No. 575 (1990). We further note that a government body's promise to keep information confidential is not a basis for excepting information from required disclosure unless the governmental body has express statutory authority to make such a promise. See Attorney General Opinion JM-672 at 2 (1987); Open Records Decision No. 514 at 1 (1988). Thus, where an individual provides information based on a promise of confidentiality that

is made without statutory authority, the information provided is not confidential under the Act on the basis of such a promise.

We note that Exhibit E apparently contains information that is not subject to disclosure pursuant to section 552.117 of the Government Code. Section 552.117(2) excepts from disclosure information that relates to the home addresses, home telephone numbers, and social security numbers of police officers and information that reveals whether the officer has family members. We have marked the information that the city must withhold from disclosure under section 552.117.

You also contend that the documents in exhibit C titled "Case Summary" and "Investigation Notes" should be withheld from disclosure under section 552.108 because "they tend to reveal law enforcement techniques." In relevant part, section 552.108 states:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

* * *

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with the detection, investigation, or prosecution of crime;

* * *

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the submitted information does not explain on its face how and why its release would interfere with law enforcement. We have carefully examined the information at issue and find, at most, that the information, if released, may reveal commonly known investigative techniques. This office has stated that where the investigative techniques are commonly known, the statutory predecessor to section 552.108 did not operate to except the information from required public disclosure. Open Records Decision No. 252 at 3 (1980). Thus, we conclude the information you have identified is not excepted from disclosure under section 552.108 and that the city must release this information.

Finally, we note that exhibit D contains the number of a personal identification document issued by an agency of this state. Section 552.130 of the Government Code excepts this information from disclosure. *See* Gov't Code § 552.130(a)(3). Accordingly, we have marked for redaction the information at issue.²

In summary, if the requestor is acting as her son's agent, the Act gives the city the discretion to either comply with this request or deny it in its entirety. As to the exceptions asserted, the city may withhold the information contained in exhibit B under section 552.108, but must release "basic information" from that exhibit. The city must also release the remainder of the requested information, except the city must first redact the specific information we have marked as excepted under sections 552.117 and 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

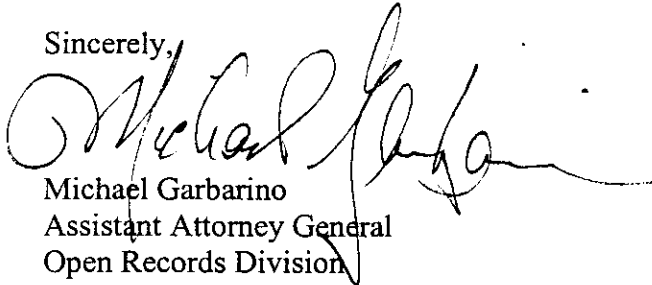
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

²Although the city did not assert section 552.130, we believe this exception is intended to protect the privacy interests of third parties. We have accordingly raised section 552.130 on behalf of the city, although this office will not ordinarily raise an exception that a governmental body has failed to assert. Open Records Decision 455 at 3 (1987).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/CHS/ljp

Ref: ID# 136057

Encl. Submitted documents

cc: Ms. Mary J. Bailey
210 Linwood
Neosho, Missouri 64850
(w/o enclosures)